

Calendar No. 1242

77TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 1200

ESTATE OF CHARLES L. CLARK

MARCH 25 (legislative day, MARCH 5), 1942.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 5500]

The Committee on Claims, to whom was referred the bill (H. R. 5500) for the relief of the estate of Charles L. Clark, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1725, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1725, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 5500) for the relief of the estate of Charles L. Clark, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Page 1, line 7, strike out the figures "\$10,000" and insert in lieu thereof the figures "\$5,000".

The purpose of the proposed legislation is to pay to the estate of Charles L. Clark the sum of \$5,000 for personal injuries sustained, resulting in his death, when he was struck from the top of a moving freight car by signal wires strung across the track by a signal unit of the Army of the United States, in Yelm, Wash., on August 16, 1940.

STATEMENT OF FACTS

On August 16, 1940, a freight train of the Great Northern Railway Co. was proceeding northward from Yelm, Wash., on a line over which the right to operate freight and passenger trains had been granted the said company by the Northern Pacific Railway Co., owner; that Charles L. Clark, a brakeman in the employ of the Great Northern Railway Co., in pursuit of his assigned duties, proceeded to the top of one of the freight cars, from which it appears, a short time later, he was swept by United States Army signal wires, strung across the railway right-of-way; that Mr. Clark's body was found as soon as the train passed, scattered along the railway track at distances varying from 100 to 275 feet northward from the edge of the crossing; that an examination made shortly after the accident disclosed that all five pairs of said wires were broken; visibility was very

poor at this time, and the nearest signal wires could not be seen from the station at Yelm, 300 feet distant; at the time of his death, Mr. Clark carried approximately \$4,000 in life insurance, that he was 47 years of age, and that his wife, Norma Sophia Clark, age 47, was wholly dependent upon him, and that he had contributed indefinite amounts to the support of his son, Charles L. Clark, Jr., age 12, an inmate of the State custodial school, and to his aged, widowed mother; that on January 21, 1941, Norma Sophia Clark brought suit in Superior Court of Washington for King County against the Great Northern Railway Co. for damages in the amount of \$50,000; that the court held in this case that the Great Northern Railway Co. was not liable for the damages resulting in her husband's death.

The War Department, in a report dated August 29, 1941, recommend the enactment of the legislation in whatever amount the Congress, in its discretion, deems appropriate. Appended hereto is the report of the War Department, together with other pertinent evidence.

WAR DEPARTMENT,
Washington, August 29, 1941.

HON. DAN R. McGEHEE,
*Chairman, Committee on Claims,
House of Representatives, Washington, D. C.*

DEAR MR. McGEHEE: The War Department will interpose no objection to the enactment of H. R. 5500, Seventy-seventh Congress, which would pay to the estate of Charles L. Clark the sum of \$10,000 in full settlement of all claims against the United States for the death of Charles L. Clark on August 16, 1940, as the alleged result of being swept from a moving freight train by signal wires strung across a railway right-of-way by members of the United States Army.

On August 16, 1940, at about 9:30 p. m., a freight train pertaining to the Great Northern Railway Co. was proceeding northward from Yelm, Wash., on a line over which the right to operate freight and passenger trains had been granted to the said company by the Northern Pacific Railway Co., owner. As the train was leaving the station of Yelm, Charles L. Clark, a brakeman in the regular employ of the Great Northern Railway Co., then in the pursuit of his assigned duties proceeded to the top of one of the freight cars from which, it appears, a short time later he was swept by United States Army signal wires strung across the railway right-of-way, thereby giving rise to the damages which are the subject of the proposed legislation.

The board of officers, appointed to investigate the accident, adduced evidence to the effect that during the early morning of August 15, 1940, and late afternoon of August 16, 1940, five separate pairs of insulated signal wires were suspended across the right-of-way of the Northern Pacific Railway at its intersection with State Highway 51 about 300 feet north of the railway station at Yelm, Wash.; that these signal wires pertained to the communication system installed by units of IX Army Corps then engaged in maneuvers in the vicinity of Yelm, Wash.; that these five lines were suspended across the railway right-of-way by three separate Army organizations working individually and at different times; that the personnel engaged in this wire-laying operation was comparatively inexperienced, but was cognizant of the fact that crossings over the railroad in this case should have been effected by going under the rails instead of suspending wires above; that three pairs of signal wires were strung on the north side and adjacent to the highway and two to the south, both parallel to the highway, the distance between the two general lines being 57 feet; that the three lines on the north side of the highway were secured to two telephone poles 104½ feet apart at heights which resulted in a 17-foot 2-inch clearance over the rails passed over by the train when conditions of suspension were reenacted at the instigation of the board; that the two lines on the south of the highway were secured to two telephone poles 109½ feet apart at heights which resulted in a clearance, above the rail, of 17 feet 9 inches, as heretofore determined; that the minimum clearance above the rail required by the Department of Labor and Industries of the State of Washington was 25 feet; and that the running boards on the tops of box cars owned by the Great Northern Railway Co. vary from 12 feet 8¾ inches to 14 feet 8¾ inches above the height of the rail beneath; and that Basic Field Manual 24-5, Signal Communications, as compiled by the Signal Corps, United States Army, which was in force at the time of the accident, required that "field wire lines should cross railroad tracks under the rails, never overhead * * *".

The board further established by evidence that Great Northern freight train No. 997, consisting of 5 flat cars and 33 boxcars proceeding northward, stopped at Yelm, Wash., about 9 p. m. on August 16, 1940, to discharge freight. After completing the task, Charles L. Clark, a regularly assigned brakeman of the Great Northern Railway, went into the depot at Yelm to pick up some papers; that the train was in motion when he came out of the depot; that he caught hold of the grab iron on one of the cars and climbed to the top, carrying a lighted brakeman's lantern; that he reached the top of the railroad car just before the said car reached the south side of the intersection which the railroad made with Highway 51, that very shortly thereafter Mr. Clark seemed to lose his balance, regain same only to lose it again a few seconds later, as evidenced by arcs described by his lantern; that Mr. Clark's body was found, as soon as the train passed, scattered along the railroad tracks at distances varying from 100 to 275 feet northward from the edge of the crossing; that, at an examination made shortly after the accident, all 5 pairs of signal wires were discovered to be broken; that visibility was very poor at this time so that the nearest signal wires could not be seen from the station at Yelm 300 feet distant.

Testimony was adduced to the effect that written permission was given the United States, its troops, and the troops of the National Guard engaged in the conduct of special field exercises, to enter, maneuver upon, pass over, and bivouac upon certain real properties of the Northern Pacific Railroad Co. in Thurston County, Wash., which contained, within its limits, the scene of the accident. The instrument specifically included a proviso that "the United States shall not interfere in any way with the train operations of said company upon said property during the conduct of such special exercises * * *." Testimony was further adduced that the Workmen's Compensation Act of Washington did not apply to interstate railway employees, such as Mr. Clark—such employees, in fact, being expressly excluded therefrom by statute; that at the time of his death Mr. Clark carried approximately \$4,000 in life insurance; that he was 47 years of age at the time of his death; that his wife, Norma Sophia Clark, age 47, was wholly dependent upon him; that he had contributed indefinite amounts to the support of his son, Charles L. Clark, Jr., age 12, an inmate of the State custodial school, and to his aged, widowed mother.

The board of officers which met to investigate the accident found that Charles L. Clark came to his death as a result of collision with communication wires strung by Regular Army and Washington National Guard troops across the Northern Pacific Railroad right-of-way at Yelm, Wash.; and that there was no criminal negligence on the part of any officer or enlisted man.

Information is on file with the War Department that on January 21, 1941, Norma Sophia Clark, as administratrix of the estate of Charles L. Clark, deceased, brought suit in the Superior Court of Washington for King County against the Great Northern Railway Co. for damages in the sum of \$50,000. No information has been received concerning the outcome of this trial.

After careful consideration of all the evidence adduced in this case, it is the opinion of the War Department that the proximate cause of the accident was negligence on the part of the three signal communication crews in suspending signal communication wires across the railroad right-of-way at a height which would not clear a brakeman standing atop a boxcar.

Since, therefore, it appears that Mr. Clark came to his death through no fault or negligence on his part, but rather through negligence on the part of personnel of the United States Army, the Department, while not prepared to pass upon the amount that should be granted his estate, will interpose no objection to legislation compensating his estate in such amount as the Congress may deem proper to allow, taking into consideration any amounts which may be recovered from the suit against the Great Northern Railway Co.

Sincerely yours,

ROBERT P. PATTERSON,
Acting Secretary of War.

AFFIDAVIT

STATE OF WASHINGTON,
County of King, ss:

Norma Sophia Clark, being first duly sworn, upon her oath deposes and says that—

I am the widow of Charles L. Clark, who was killed on August 16, 1940, at Yelm, Wash.; that he was swept from the top of a boxcar by signal wires strung across railroad tracks.

I am 48 years of age, having been born on November 12, 1892, and I was married to Charles L. Clark on June 16, 1927. There is one son the result of our marriage, Charles L. Clark, Jr., aged 12, who is now in the State custodial school at Medical Lake, Wash. My husband and I have been under the necessity of furnishing him with all of his clothes and some food at the school for the last 8 years. In addition to supporting me and contributing to the support of our son, my husband also contributed to the support of his widowed mother.

At the time of Mr. Clark's death, we were buying a home at 707 North One Hundred and Eighty-fifth Street, Richmond Highlands, Wash., the original purchase price of which was \$2,600, and of which approximately \$900 has been paid. The balance is payable in monthly installments of \$20.

At the time of his death Mr. Clark carried insurance, amounting, in all, to less than \$4,000. Neither my husband nor I had any other property. My only means of support was my husband's wages, all of which he contributed to the family support. Our family relations were always cordial, and Mr. Clark was a steady, industrious worker.

Mr. Clark was born September 8, 1892, and was 47 years old at the time of his death. He entered the service of the Great Northern Railway Co. on October 13, 1925, and was employed as a brakeman by that company for 15 years. His earnings in 1939 were \$2,150.05, and for the first 7 months of 1940 they were \$1,276.64, or approximately \$182 per month.

I am advised that the Workmen's Compensation Act of Washington does not apply to interstate railway employees, and that my husband was not covered by said act.

According to the American Mortality Tables, my husband had a life expectancy of 23.08 years. On a 3 percent basis, it would take the sum of \$36,990.40 to purchase an annuity which would provide a monthly income of \$182.

NORMA SOPHIA CLARK.

Subscribed and sworn to before me this 2d day of September 1941.

[SEAL]

ROGER L. SHIDLEY,

*Notary Public in and for the State of Washington,
Residing at Seattle.*

STATEMENT ON BEHALF OF NORMA SOPHIA CLARK, IN SUPPORT OF H. R. 5500

H. R. 5500 has been introduced in the House of Representatives. This bill would authorize the Secretary of the Treasury to pay to the estate of Charles L. Clark, deceased, of Richmond Highlands, Wash., the sum of \$10,000, in full settlement of all claims against the United States for the death of Charles L. Clark when, during the performance of his duties as a brakeman for the Great Northern Railroad, he was struck from the top of a moving freight car by signal wires strung across the tracks by a signal unit of the Army of the United States in Yelm, Wash., on August 16, 1940. The following affidavits have been submitted:

1. Affidavit of James R. Donovan, a member of the train crew, showing that Clark went to the top of the box cars just prior to the accident.
2. Affidavit of Jack Loutzenhisser, showing that Army signal wires were strung across the railroad tracks; also showing that broken Army signal wires were lying in the street after Clark was swept from the boxcar.
3. Affidavit of A. E. Huhundorf, showing that Army signal wires were strung across the railroad tracks on the afternoon before the accident, which wires were hanging dangerously low over the tracks.
4. Affidavit of Lester Strain, showing that someone on top of the boxcars was apparently jerked off suddenly; also that broken Army signal wires were lying in the street after the accident.
5. Affidavit of Norma Sophia Clark, showing the earnings of Charles L. Clark; also showing the dependency of Norma Sophia Clark and her son upon said earnings.

The foregoing affidavits show that Charles L. Clark was swept from the top of a boxcar, where he was working, by Army signal wires strung across the main street of Yelm, Wash.

Most of the witnesses who could make statements with regard to the stringing of the wires by the Army Signal Corps are members of the United States Army. They are prevented by law from giving statements in support of claims against the United States Government. However, testimony of all of the witnesses was taken before the board of inquiry of the United States Army, which was convened to investigate the circumstances surrounding the death of Charles L. Clark.

The testimony so taken is part of the files and records of the War Department and, we assume, available to the congressional committee investigating this claim.

The record of the testimony taken by the board of inquiry will, we are confident, show the following facts:

Prior to August 16, 1940, war maneuvers were being conducted by the Army of the United States, in the vicinity of Yelm, Wash., and, as part of such maneuvers, soldiers of the Army and of the National Guard units of various States were divided into two armies, the red and the blue. On August 14 or 15, and again on August 16, the signal wires involved in the death of Clark were strung across the railroad tracks at their intersection with the main highway through Yelm by signal units attached to the red army, and also by signal units attached to the blue army. Three sets of the wires were strung across the railroad tracks by the Sixtieth Signal Battalion, stationed at Fort Lewis, Wash.; the other two sets of wires were strung across the railroad tracks by the Sixty-sixth Field Artillery Brigade of the Forty-first Division. These five sets of wires were the ones that dragged Charles L. Clark from the boxcar. The wires were strung at a height of approximately 20 feet 4 inches on the pole on the southeast corner of the intersection, at 22 feet 6 inches on the southwest corner, at 19 feet on the northeast corner, and at 20 feet 6 inches on the northwest corner. The wires necessarily sagged in the center and over the north-bound main track so that the clearance from the top of the rail was not more than 17 or 18 feet.

The wires were so placed directly contrary to the provisions of paragraph 203 of the Basic Field Manual, relating to signal communication 24-x5, issued by the War Department, as follows:

"203. *Railroad crossings.*—Railroad yards should be avoided by skirting them. If a bridge or culvert is available, it should be used in making the crossing even if necessary to parallel the tracks with the wire for some distance in order to reach it. If a bridge or culvert is not available, field wire lines should cross railroad tracks under the rails, never overhead. The wires are pulled tight and buried outside the rails to a point beyond the shoulders or improved strip along the tracks, and secured on both sides to prevent them from being pulled out and becoming a hazard to trainmen."

Great Northern train 997, of which Charles L. Clark was a crew member, pulled into Yelm station from the south at about 9 p. m. The train unloaded freight there, and, when the signal was given to go ahead, Charles L. Clark went into the depot and then came out and caught the grab iron on one of the cars and proceeded to climb up the side in order to reach the top and stand or walk upon the running board. The wires could not be seen at that time of night.

When the car upon which Clark was riding reached the crossing, the wires swept him off the top of the boxcar and in between the boxcars and under the wheels. His body was ground to bits. After the train went by, his body was found in parts all the way up the track for 200 or 300 feet. After the accident, the broken Army signal wires were found in the street.

From the affidavits submitted and the record of the testimony before the board of inquiry, there can be no other conclusion drawn but that Charles L. Clark was swept off the car by the wires placed by the soldiers, and was killed by reason of the wires being in the position in which they were.

The present cash value of the pecuniary loss sustained by the widow and the child through the death of Charles L. Clark must be commuted on an annuity basis. To provide the earnings or monthly income of \$182 on the life expectancy of Charles L. Clark, a man of 47 years of age, would take \$36,990.40. Of a man's monthly earnings, it is usually estimated that he spends 40 percent upon himself and 60 percent upon his family. Upon this basis, the loss of pecuniary benefit alone to the family amounts to \$22,194.25. In addition to the pecuniary loss, there is, of course, the matter of loss of daily services, attention, and care bestowed on his family, and the loss of comforts, conveniences, and of education suffered by the minor child. If this were an action against a private corporation, a verdict of \$25,000 would not be considered excessive.

It is submitted that the estate of Charles L. Clark is entitled to receive the sum of \$10,000 in full settlement of all claims against the United States for the death of Charles L. Clark.

Respectfully submitted.

HARROUN & SHIDLER,
*Attorneys for the estate of Charles L. Clark, deceased,
and for Norma Sophia Clark, his widow.*

JOHNSON & SONS MORTUARY, INC.

Seattle, Wash., September 8, 1941.

To Mrs. NORMA S. CLARK,
Seattle:

August 20, 1940, funeral of Charles L. Clark: Funeral service complete (without cemetery charges), \$371.30.

Paid in full.

JOHNSON & SONS MORTUARY, INC.,
By N. E. GUSTAFSON, Secretary.

AFFIDAVIT

STATE OF WASHINGTON,

County of King, ss:

James R. Donovan, being first duly sworn, on his oath deposes and says that—

I am a resident of Seattle, Wash., and I am now and was on August 16, 1940, employed by the Great Northern Railway Co. My run is a freight run from Seattle to Vancouver, Wash., and return. Charles L. Clark, a brakeman, was a member of the train crew.

On the evening of August 16, 1940, at about 9:15 p. m., the train stopped at Yelm, Wash., to unload some way freight. Charles L. Clark and I were in a boxcar, unloading the freight. As the train started, we got out of the boxcar, and I climbed on the engine. Charles L. Clark went up to the steps of the engine and then ran back to the depot. The train, in the meantime, was slowed down by the engineer. Clark caught the handrails of a boxcar about 10 or 12 cars from the engine, and I saw a lantern go up the side of the car and believed he was climbing up on the boxcar. This was before the train reached the main street of Yelm, on its way north. The depot where the train was stopped is about 300 feet from the main street.

When Mr. Clark did not come up to the engine, by walking over the tops of the boxcars, I thought that something was wrong, and, when we reached the next station, I discovered that he was not on the train.

JAMES R. DONOVAN.

Subscribed and sworn to before me this 2d day of September 1941.

[SEAL]

H. F. JOHNSON,
Notary Public in and for the State
of Washington, residing at Seattle.

AFFIDAVIT

STATE OF WASHINGTON,

County of Thurston, ss:

Jack Loutzenhiser, being first duly sworn, on his oath deposes and says that—

I am now and was on August 16, 1940, a resident of Yelm, Wash. On August 16, 1940, and for some days prior thereto, I was working in a bean-receiving station, situated near the intersection of the railroad tracks with the main street of Yelm, Wash.

For several days prior to August 16, 1940, Army maneuvers were being conducted in and about Yelm, Wash. Three or four days before August 16, 1940, I observed Army signal wires strung along the main street of Yelm and across the railroad tracks, where they intersect the main street of Yelm.

On the evening of August 16, 1940, when Charles L. Clark was killed, I was working at the bean-receiving station. After he was killed, I went over to the scene of the accident. Various parts of his body were strung along the tracks from the place where the street crosses the highway up the track for 200 or 300 feet. The broken Army signal wires were lying in the street.

I have no interest in this case and do not know Mrs. Charles L. Clark or any of the parties involved.

JACK LOUTZENHISER.

Subscribed and sworn to before me this 26th day of August 1941.

[SEAL]

JAMES L. MOSMAN,
Notary Public in and for the State of Washington,
residing at Yelm.

AFFIDAVIT

STATE OF WASHINGTON,

County of Thurston, ss:

A. E. Huhundorf, being first duly sworn, on his oath deposes and says that—

I am now and was on August 16, 1940, a resident of Yelm, Wash. On August 16, 1940, I was in the lumber business at Yelm, and my place of business was next to the railroad tracks, where they intersect the main street of Yelm.

For several days prior to August 16, 1940, Army maneuvers were being conducted in and around Yelm, Wash., in which Regular Army troops and National Guard troops were engaged.

Late in the afternoon of August 16, 1940, I observed soldiers putting up army signal wires along the main street of Yelm and across the railroad tracks where they intersect the main street. The wires which I observed were laid on the north side of the street. I particularly noticed the wires because, at the time, they appeared to me to have been hung dangerously low over the railroad tracks. Previous to the accident, I had noticed railroad men riding the tops of box cars in and about Yelm, Wash.; and, when I observed the wires being strung, it appeared to me that they were not high enough to clear men on the tops of the cars.

I have no interest in this case and do not know Mrs. Charles L. Clark or any of the parties involved.

A. E. HUHUNDORF.

Subscribed and sworn to before me this 5th day of September 1941.

[SEAL]

JAMES L. MOSMAN,

*Notary Public in and for the State of Washington,
residing at Yelm.*

AFFIDAVIT

STATE OF WASHINGTON,

County of Thurston, ss:

Lester Strain, being first duly sworn, on his oath deposes and says that—

I am now, and was on August 16, 1940, a resident of Yelm, Wash.

On the evening of August 16, 1940, at about 9:15 p. m., I was driving in my car down the main street of Yelm. I stopped at the crossing where the railroad tracks intersect the main street, to allow a freight train to go by. The freight train was pulling out of the depot and was headed north. I observed someone with a lantern on top of the box cars, the outline of the person being very vague and dim, as it was quite dark. As the train crossed the main street, I noticed the light go up in the air in a short arc, as if jerked up suddenly, and then the light disappeared. After the train had passed, I discovered that a brakeman had been swept from the top of a boxcar by Army signal wires. The body of the brakeman was ground into a number of pieces by the wheels of the train, and the pieces were lying along the track. After the train had passed, I noticed the broken Army signal wires lying in the street.

I have no interest in this case and do not know Mrs. Charles L. Clark or any of the parties involved.

LESTER STRAIN.

Subscribed and sworn to before me, this 26th day of August 1941.

[SEAL]

LOUIS O. COCHRANE,

*Notary Public in and for the State of Washington,
Residing at Yelm.*



